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NO. 802

IN THE

Supreme Court of the United States

October Term, 1964

KINNEAR-WEED CORPORATION, *Petitioner*,

v.

HONORABLE JOE M. INGRAHAM, UNITED STATES DISTRICT JUDGE, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS,

Respondent.

PETITIONER'S MOTION AND REPLY TO BRIEF IN OPPOSITION TO DEFENDANTS HUMBLE OIL AND REFINING COMPANY, INDIVIDUAL DEFENDANTS AND STANDARD OIL COMPANY

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

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v.

HONORABLE JOE M. INGRAHAM, UNITED STATES DISTRICT JUDGE, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, *Respondent.*

PETITIONER'S MOTION TO STRIKE AND DISMISS OPPOSITION BRIEF OF DEFENDANTS HUMBLE OIL AND REFINING COMPANY, INDIVIDUAL DEFENDANTS AND STANDARD OIL COMPANY

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

Petitioner moves the Court to strike and dismiss the above-named defendants and BRIEF IN OPPOSITION OF RESPONDENTS NAMED BELOW filed herein on January 25, 1965 for the following reasons:

1. Defendants Humble Oil and Refining Company, Standard Oil Company and the Individual Defendants

named in Civil Action No. 63-H-509 now pending in the United States District Court For The Southern District of Texas *are not Respondents* in this Petition for Writ of Certiorari: and,

2. Honorable Joe M. Ingraham is the *only* Respondent in this cause;

3. Garrett R. Tucker, Jr., Cornelius O. Ryan and William J. Merrill *are not counsel* for Respondent Honorable Joe M. Ingraham but to the contrary are counsel for the defendants named, which defendants, are not parties Respondent in this particular proceeding and has no legal authority or right to file BRIEF IN OPPOSITION to Petitioner's Petition for Writ of Certiorari because under Rule 24 of the Supreme Court only Respondent, Honorable Joe M. Ingraham has the right to file opposition brief. The January 25, 1965 Opposition brief is filed by counsel for defendants named in the complaint, but no opposition brief has been timely filed by Respondent, Honorable Joe M. Ingraham.

For the foregoing reasons, Petitioner prays the Court to strike and dismiss brief in opposition filed herein on January 25, 1965 and dismiss the defendants who are not Respondents, to Petition for Writ of Certiorari filed herein on January 2, 1965 by Petitioner.

Respectfully submitted,

WILLIAM E. KINNEAR
Suite 419-21 Beaumont Savings Bldg.
Beaumont, Texas
Counsel for Petitioner

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PETITIONER'S REPLY BRIEF

Without waiving the foregoing motion, but still insisting upon the same, Petitioner presents its REPLY BRIEF to BRIEF IN OPPOSITION OF RESPONDENTS NAMED BELOW filed herein on January 25, 1965 by Defendants Humble Oil and Refining Company, Individual Defendants and Standard Oil Company, and, prays its Petition for Writ of Certiorari be granted.

ARGUMENT

I.

The petition for writ of certiorari filed herein by Petitioner on January 2, 1965 presents jurisdictional ques-

tions and the opposition brief thereto filed January 25, 1965 avoids the jurisdictional questions set out in the petition, which are the real issues involved. The argument and authorities cited in the opposition brief does not bear upon the jurisdictional questions presented. Writs of mandamus and prohibition is the proper remedy in view of the circumstances in this case as pointed out in the petition.

II.

The allegations set out in the AFFIDAVIT (R. 90) are fact statements supported by reasons and cannot be passed off as mere conclusions referred to in the opposition brief. When the court reviews the AFFIDAVIT (R. 90) it will find sufficient fact allegations and reasons therein to disqualify Honorable Joe M. Ingraham in Civil Action No. 63-H-509. For example, the affidavit particularly points out the fact allegations as follows:

(1) That the Complaint in Civil Action No. 63-H-509 was duly adopted under the local rules of the Southern District of Texas and legally filed under the honor sealed card system and assigned to the Court of Judge Allen B. Hannay;

(2) That Judge Joe M. Ingraham having knowledge that the case was duly and legally assigned to the Court of Judge Allen B. Hannay has illegally taken over said case and assumed jurisdiction over the parties and the subject matter of said Civil Action No. 63-H-509;

(3) That Judge Joe M. Ingraham did the defendants bidding requested in defendants letter dated August

6, 1964 (R. 15) knowing full well he had no jurisdiction in the case and on August 7, 1964 ordered (R. 17) pre-trial conference for September 8, 1964.

All of the fact allegations in the affidavit together with the reasons therein stated shows the purpose, design and intent of Judge Joe M. Ingraham to pirate and usurp the jurisdiction of Civil Action No. 63-H-509 from the jurisdiction of the Court of Judge Allen B. Hannay to whom the case was legally assigned under the local rules af The Southern District of Texas, as per Docket (R. 19).

III.

The defendants in the opposition brief conveniently stay away from any discussion of Petitioner's QUESTION PRESENTED III in the petition because Judge Ingraham in the *"worst of bad faith"* after knowledge that Circuit Judge Joseph C. Hutcheson, Jr. was disqualified in the Court of Appeals case No. 21,870 below *"failed and refused"*, although duty bound, to order the Defendants to come forward with him and request the Court of Appeals to set aside its fraudulent order (R. 24) of September 10, 1964, which positively shows that Judge Ingraham has personal bias and prejudice for said Defendants in Civil Action No. 63-H-509 and against Plaintiff your Petitioner herein.

IV.

The opposition brief of Defendants tries to establish that Civil Action No. 63-H-509 was transferred from the jurisdiction of the Court of Judge Hannay to the jurisdiction

of the Court of Judge Ingraham, but the opposition does not bring forward proof or order:

(1) To show that Judge Hannay disqualified himself;

(2) To show that all of the judges of the District Court transferred the case from the jurisdiction of the Court of Judge Hannay to the jurisdiction of the Court of Judge Ingraham;

But, to the contrary Petitioner brings forward proof by exhibiting the Docket (R. 19) in Civil Action No. 63-H-509 to definitely and positively show that no order of disqualification was made by Judge Hannay, or, that an order was made by all of the judges of said District Court transferring the case from the jurisdiction of Judge Hannay to the jurisdiction of the Court of Judge Ingraham.

And furthermore, the Docket (R. 19) "*has been tampered with and changed*" by lining out the name of Judge Hannay and inserting the name of Judge Ingraham without any written authority by order of all of the judges of said District Court as charged in SUPPLEMENTAL MOTION (R. 66) with attached AFFIDAVIT (R. 69) of William E. Kinnear, Counsel for Petitioner. This affidavit has not been denied or refuted in any way by Defendants or Respondent Judge Ingraham and therefore, this Court should hold that the Docket (R. 19) has been "*fraudulently changed and tampered with*" in an attempt to defeat Petitioner's legal right to a fair trial before a fair and impartial judge.

CONCLUSION

For the foregoing reasons herein and in the Petition the writ of certiorari should be granted. Oral argument is respectfully requested.

Respectfully submitted,

WILLIAM E. KINNEAR
Suite 419-21 Beaumont Savings Bldg.
Beaumont, Texas
Counsel for Petitioner

Dated: ~~January~~ February 2, 1965

CERTIFICATE OF COUNSEL

I, William E. Kinnear, Counsel for Kinnear-Weed Corporation, Petitioner in the above-entitled case, hereby certify that the above and foregoing, PETITIONER'S MOTION TO STRIKE AND DISMISS, etc., and, PETITIONER'S REPLY BRIEF are presented in good faith, and not for the purpose of delay, restricted to the grounds therein specified but in the opinion of counsel, well founded in law and proper to be filed herein.

WILLIAM E. KINNEAR

PROOF OF SERVICE

I, William E. Kinnear, Counsel for Kinnear-Weed Corporation, Petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 2nd day of ~~January~~ February 1965, I served copies of the foregoing PETITIONER'S MOTION TO STRIKE AND DISMISS, etc., and, PETITIONER'S REPLY BRIEF, by mailing the required copies in duly addressed envelopes by U. S. Mail, postage prepaid to Honorable Joe M. Ingraham, United States District Judge, United States District Court for the Southern District of Texas, United States Court House, Houston, Texas and served copies in the same manner to: Mr. Garrett R. Tucker, Jr., Esq., Baker, Botts, Shepherd & Coates, 1600 Esperson Bldg., Houston, Texas, and Mr. C. O. Ryan, Esq., Kelley, Ryan & Merrill, 666 Gulf Building Addition, Houston, Texas.

WILLIAM E. KINNEAR